Petition

No. 81-1786

Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS

In The

Supreme Court of the United States

October Term, 1981

THE NORTH RIVER INSURANCE COMPANY,

Petitioner,

vs.

SCALI, McCABE, SLOVES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. May summary judgment be granted, as a matter of law, without a hearing, in an action to recover legal fees where the reasonableness of the fees is an issue.

2. Whether the granting of summary judgment in an action to recover legal fees without the holding of a hearing to determine the reasonableness of the fees constitutes a deprivation of the petitioner's right to due process.

3. Whether members of the general public are entitled to expect that, upon request, members of the bar will be required to establish the reasonableness of any charges and fees which they seek to charge or collect.

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No.

In The

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THE NORTH RIVER INSURANCE COMPANY,

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vs.

SCALI, McCABE, SLOVES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner The North River Insurance Company prays that a writ of certiorari be issued to review the order of the United States Court of Appeals for the Second Circuit made on December 23, 1981, which affirmed the final judgment entered in the United States District Court for the Southern District of New York on July 22, 1981.

OPINIONS BELOW

The Court of Appeals disposed of this case with a judgment order, as yet unreported officially, and which appears at Appendix A at pages 1a through 4a; and the opinion of the court being included therein.

The decision and order of the United States District Court is also unreported (Appendix B, *infra,* pages 5a through 18a).

JURISDICTION

The judgment order of the Court of Appeals was entered on December 23, 1981 (*see* Appendix A, *infra*). This petition for certiorari was filed less than 90 days from that date. Jurisdiction of this Court is based upon 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Rule 56(a) and (c) of the Federal Rules of Civil Procedure provides:

> "Rule 56. Summary Judgment.
>
> (a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.
>
> * * *

(c) MOTION AND PROCEEDING THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

STATEMENT OF FACTS

Background

1. Issue of Insurance Coverage in Other Litigation

On January 25, 1976 the respondent corporation (hereinafter referred to as "Scali") through its president, Martin Sloves (hereinafter referred to as "Sloves") allegedly made and had published in the New York Times Magazine certain comments concerning Dictaphone Corporation including the following:

> "They (Dictaphone) were going out of business when they came to us, he said. We got caught up in their internal battles. We wanted to put them on a fee rather than commission basis and they resigned to us."

On January 28, 1976, three days after the aforementioned article was published in the New York Times Magazine, the

respondent Scali applied for and secured a liability policy of insurance from the petitioner insurance company. Said policy, which covered the respondent Scali for libelous statements made by it and/or its officers was "retroactive" to August 21, 1975.

On March 9, 1976 Dictaphone commenced a lawsuit against Scali and its president, Martin Sloves, as defendants, seeking $1,000,000 in compensatory damages and $2,000,000 in punitive damages, alleging slander and defamation.

2. Respondent Applies for and Receives Liability Policy Three Days After Publication of Article

The instant lawsuit arises out of a dispute between the respondent and petitioner insurance carrier concerning the respondent's claim for reimbursement of legal fees paid by it to its personal attorneys for undertaking and completing the defense of the action commenced by Dictaphone Corporation and for which the petitioner insurance carrier provided coverage under a liability policy issued by it.

Upon being served with process in the Dictaphone action, Scali and Sloves, through their insurance broker, notified the petitioner insurance carrier that they had been served and that a lawsuit had been commenced by Dictaphone.

Upon receipt of this first notice, the petitioner insurance company was very much in doubt as to whether there was coverage for this allegedly libelous act of the assured, particularly in view of the fact that there was no policy in existence on the date of the alleged libelous act (January 26, 1976). The record shows that Scali had not secured a policy of insurance until three days after the publication of the aforementioned article.

Understandably, the petitioner insurance company prior to issuing such a retroactive policy of insurance required that the assured affirm that it knew of no potential or actual claims.

Hence, when Dictaphone commenced its action alleging libelous acts which occurred prior to the issuance of the policy, the petitioner insurance company was confronted with a very serious question of coverage with respect to that litigation.

Nevertheless, when the petitioner insurance company failed to immediately agree to extend coverage and to provide a defense the respondent Scali retained the law firm of Paul, Weiss, Rifkind, Wharton & Garrison (hereinafter referred to as "Paul, Weiss") to handle the Dictaphone litigation.

3. Petitioner Insurance Carrier Asks that Respondent Refrain from Commencing Discovery

By letter dated May 18, 1976, the petitioner insurance company advised Paul, Weiss that the question of coverage had yet to be determined and that Paul, Weiss and its client were, therefore, requested to refrain from proceeding with any discovery in the Dictaphone action.

Nevertheless, Scali and Sloves and their personal attorneys, Paul, Weiss, rushed in to commence depositions.

4. Petitioner Agrees to Pay for all Reasonable and Necessary Legal Fees

By letter dated November 17, 1977, the petitioner insurance carrier conceded (rightfully or wrongfully) that there was and would be coverage up to the policy limits for this alleged libelous act.

It must be noted, however, that the letter also stated that the insurance company would not afford any coverage for any claim of punitive damages.

Most importantly, the letter stated that the petitioner insurance carrier would assume the cost of all *reasonable and necessary* legal fees, nothing more and nothing less.

With that advice, the respondent proceeded to have its own personal attorneys handle the defense of the Dictaphone action.

On March 17, 1980, the Dictaphone case was finally settled by the respondent's personal attorneys, Paul, Weiss for the sum of $25,000. This settlement was of the action by Dictaphone for compensatory as well as punitive damages. There was no breakdown as to how much was being paid for compensatory damages and how much for punitive damages.

5. The Instant Dispute Concerning the Reasonableness of Legal Fees Being Charged

The instant lawsuit was commenced by the respondent Scali and seeks reimbursement from the petitioner North River Insurance Company, of legal fees paid by the respondent to its personal attorneys, Paul, Weiss, for undertaking and completing the defense of the Dictaphone action.

It has been the position of the respondent throughout this lawsuit that the petitioner insurance company is estopped from in any way challenging the sums allegedly paid by the respondent to Paul, Weiss: $105,055 for legal fees; $7,235.54 for disbursements; $3,530.95 for stenographic fees and recording and transcribing various depositions; and $1,666 for preparation of S.A. Hartwell, as an expert witness, all of which the respondent is demanding that the petitioner insurance carrier reimburse it for, and which yields a grand total of $117,487.49.

6. Position of Petitioner Insurance Company

The petitioner insurance company has never throughout this lawsuit contended that it is not obligated to reimburse the respondent for legal fees which it incurred in the defense of the Dictaphone action.

On the contrary, the petitioner insurance company has always been willing to reimburse the respondent and has only insisted throughout this litigation that it is first entitled to receive, either from the respondent or its personal attorneys, some explanation of this $117,487.49 figure.

In addition, the petitioner insurance company feels that it is entitled to a showing that this sum which is being sought and, which has already been paid in full, represents payment for "reasonable and necessary" expenses incurred in defending the Dictaphone action.

7. Paul, Weiss Secures Protective Order and Deposes All Disclosure

Respondent insists that since Scali has already allegedly paid this amount to its personal attorneys the petitioner insurance company is now estopped from challenging the reasonableness or necessity of the services or the charges imposed therefor.

Throughout this litigation the respondent has refused time and again to bring forth any evidence of the reasonableness of the services or of the charges and have even refused to submit to depositions in this case.

Soon after this lawsuit was commenced, the petitioner insurance company served notices of deposition on the respondent's personal attorneys, Paul, Weiss, and those notices

requested that Paul, Weiss produced any and all records pertaining to services which were provided to the respondent in connection with the defense of the Dictaphone action.

Rather than submit to those depositions and provide time sheets or other documentation which would establish the reasonableness and necessity of the legal services and charges, Paul, Weiss moved for a protective order in the District Court and demanded that all depositions and discovery be stayed pending a motion by it for summary judgment. In other words, it was the position of respondent and of Paul, Weiss that once Paul, Weiss had rendered bills to Scali, and once those bills had been paid by Scali, the petitioner insurance company was thereafter completely estopped from examining or challenging those bills and that a motion for summary judgment, simply on the face of those bills, was then appropriate.

8. Judge Motley Grants Protective Order Prior to Recusing Herself from the Case

This case was originally assigned to Judge Constance Baker Motley sitting in the United States District Court for the Southern District of New York and, consequently, it was Judge Motley who granted the motion by Paul, Weiss for a protective order staying all discovery which had been noticed by the petitioner insurance company until the respondent could make a motion for summary judgment and until that motion could be heard and determined.

Needless to say, the petitioner insurance company opposed the motion for a protective order. Petitioner insurance company argued that it needed discovery so that it could determine the reasonableness and necessity of the legal fees which it was being asked to pay and so that it could then do what it had said from the beginning it was willing to do — pay the reasonable and

necessary legal fees incurred by the respondent in defense of the Dictaphone action.

9. Motion for Summary Judgment

The case was then reassigned to Judge Robert W. Sweet, also sitting in the United States District Court for the Southern District of New York, After hearing argument, Judge Sweet issued a written decision (Appendix B, 8a) granting summary judgment to the respondent.

It was from that order and judgment granted by Judge Sweet that the petitioner insurance company appealed to the United States Court of Appeals for the Second Circuit and it is from the affirmance of the aforementioned order and judgment that the petitioner insurance company now seeks to appeal to this Court.

10. Finding by Courts Below that Petitioner Insurance Carrier Had Waived Its Right to Inquire as to the Reasonableness and Necessity of the Legal Fees

Throughout this litigation it has been the contention of the respondent that the petitioner insurance company is estopped from challenging in any fashion the bills which were presented by Paul, Weiss and paid by the respondent. Respondent further contends that if the petitioner insurance company wanted to challenge those bills it should have done so during the Dictaphone litigation rather then when presented with a demand for reimbursement.

The real issue in this case is whether the petitioner insurance company and its claimsmen had the right to expect that the attorneys would undertake only reasonable and necessary actions in defense of the underlying Dictaphone litigation and whether they also had the right to expect that when payment was sought for those legal services the attorneys would be willing and even

required to substantiate their bills at least with some evidence or documentation as to the reasonableness and necessity of the services and of the charges therefor.

On this issue it should be noted that by letter dated November 10, 1977, the petitioner insurance company advised the respondent and its personal attorneys, Paul, Weiss, that the petitioner insurance company would:

"Pay all necessary and reasonable legal expenses."

Clearly, this was not to be taken as a blank check.

Moreover, and as the record indicates, on more than one occasion, the respondent's personal attorneys Paul, Weiss, undertook certain legal services (including moving for discovery) without first notifying the petitioner insurance carrier (who received notice of same only after the action had been taken).

REASONS FOR GRANTING THE WRIT

I.

Conflict With Other Decisions

The issue is whether summary judgment may be granted, as a matter of law, and without any hearing, in an action to recover legal fees where the defendant challenges the reasonableness and neccessity of the services and charges.

In the instant case, the United States Court of Appeals for the Second Circuit has held that summary judgment may be granted.

The Fourth Circuit has, however, held to the contrary. In the case of *Bogorad v. Schwartz,* 208 F. 2d 704 (1954), an action has been brought by an attorney to recover his fee for successfully prosecuting an appeal. The lower court held that even if the client had not originally authorized the employment of the attorney to represent her in the litigation, her accceptance of the benefits of such services constituted ratification by her of the attorney's actions on her behalf. Hence, she was found liable for the attorney's fee.

On appeal, the Court of Appeals for the Fourth Circuit reversed and stated as follows:

> "It is perfectly clear . . . that Mrs. Schwartz was benefited by the services rendered in that in equity, good conscience, and common honesty and that in equity, good conscience and common honesty she ought to pay for them." (at page 705).

This petitioner wholeheartedly agrees with that statement of the law.

The Court of Appeals went on, however, to state:

> "Plaintiff (the attorney) is entitled to a reasonable fee for the services rendered . . . we do not think, however, that he is entitled to any such fee as he asks. . . . Having heard the original appeal, we are in a position to appraise the value of his services."

The court then awarded the plaintiff-attorney the sum of $500 not on the theory that this was the amount of the bill rendered by the attorney to his client but rather on the theory that the court, having read the briefs and papers submitted by the plaintiff-attorney and having heard the attorney argue the case, was in a position to know exactly what the plaintiff-attorney had done, the results achieved by him, and to determine firsthand the value of the attorney's services.

Thus, the Court of Appeals for the Fourth Circuit has held that a motion for summary judgment may not, as a matter of law, be granted in an action to recover legal fees and that there must be a prior hearing of some kind to determine the reasonableness of the legal fees which the respondent seeks to recover.

II.

Questions of Public Policy: What the General Public Is Entitled to Expect from Members of the Bar

It is respectfully submitted to this Court that the instant case presents a question of public importance and significance with respect to the relationship between members of the general public and members of the bar.

The issue in this case, very simply put, is whether or not members of the general public have the right to expect that attorneys should, upon demand, make a showing of the necessity and reasonableness of the services for which they seek to be paid and make a showing that the charges sought are reasonable. It is submitted that such should reasonably be expected of attorneys even if not expected of members of other professions and of other service trades.

The Code of Professional Responsibility, as promulgated by the American Bar Association, and as adopted and amended by the New York State Bar Association, provides as follows:

> "Disciplinary Rule 2-106A:
> A lawyer shall not enter into an agreement for, charge, or collect an illegally or clearly excessive fee.
>
> Canon 9:
> A lawyer should avoid even the appearance of professional impropriety."

This is not a case where a defendant seeks to avoid paying legal fees which are due and owing. The petitioner insurance company has from day number one stated its willingness to pay all reasonable and necessary legal fees incurred in the defense of the Dictaphone action. Furthermore, the entire judgment granted by the District Court has already been paid and satisfied.

It is respectfully submitted that review by this Court is required in order to determine once and for all whether or not members of the bar can undertake legal services and charge legal fees therefor as if they had a blank check or whether they will instead be held accountable as to the necessity of what they have done and as to the reasonableness of what they seek to charge therefor.

That such standards should be met in this case is even more obvious given the fact that the insurance policy clearly stated, as is attested to by the record, that the petitioner insurance carrier would pay all reasonable and necessary legal fees, nothing more and nothing less.

It is submitted further that the actions taken by the courts below requiring the petitioner to pay the attorneys' fees, without any hearing whatsoever as to the reasonableness of those fees, constitutes a deprivation of the petitioner's right to due process.

Review by this Court is also appropriate so as to determine whether or not members of the bar should be held to the same standards of disclosure that we require today of those who serve in public office and hold other fiduciary duties.

CONCLUSION

For all of the reasons stated above, it is respectfully requested that the instant petition for certiorari be granted in all respects.

Respectfully submitted,

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Attorneys for Petitioner

Appendix

APPENDIX A — ORDER AND DECISION OF COURT OF APPEALS

FILED DEC. 23,1981
A. Daniel Fusaro, Clerk

81-7548
81-7586

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of December one thousand nine hundred and eighty-one.

Present:

Hon. Wilfred Feinberg,
Chief Judge,
Hon. James L. Oakes,
Circuit Judge,
Hon. William C. Conner,
District Judge.

Scali, McCabe, Sloves, Inc.,

Plaintiff-Appellee-Cross-Appellant,

v.

The North River Insurance Company,

Defendant-Appellant-Cross-Appellee.

Appendix A

ORDER

This appeal and cross-appeal are from an order of the United States District Court for the Southern District of New York, Robert W. Sweet, *Judge,* granting a motion for summary judgment in favor of Scali, McCabe, Sloves, Inc. ("Scali") on its claim for legal fees and disbursements arising out of its defense of a libel action brought against it by Dictaphone Corporation in state court in 1976.

Scali seeks reimbursement for attorneys' fees incurred in defense of the libel action commenced in 1976, under a policy obligating The North River Insurance Company ("North River") "to defend, subject to the conditions, exclusions and limits provided for . . . , any action instituted against the insured, together with the payment of reasonable attorneys' fees incurred in the defense thereof." The libel case was settled for $25,000 in March 1980. On July 8, 1980 Scali filed a formal claim with North River for reimbursement for that amount and for legal fees incurred by its law firm, Paul, Weiss, Rifkind, Wharton & Garrison ("Paul, Weiss"), in defending the libel action. When North River declined to reimburse Scali for the amount claimed, Scali brought this diversity action to recover under the insurance contract, and the district court thereafter granted Scali's motion for summary judgment on all but one item claimed.

North River argues on appeal that summary judgment should not have been granted because genuine issues of fact remain concerning the reasonableness of Scali's legal fees. Although not objecting to Paul, Weiss's hourly rate of $88, North River does assert that the law firm's hours were excessive and that some of the services it performed were unreasonable. We agree with Judge

Sweet, however, that there were no triable issues of fact in this regard, and on the appeal we therefore affirm on the opinion below. North River presented only conclusory allegations that Scali's legal fees were unreasonable, but with one exception, produced no specific facts in opposition to the summary judgment motion to support its allegations. On the one item, an invoice for $1,000, in opposition to which North River did furnish facts, the district court ruled in its favor. It is, of course, well settled that the party opposing a summary judgment motion "may not rest upon the mere allegations or denials of his pleading," Fed. R. Civ. P. 56(e); *Markowitz v. Republic National Bank of New York*, 651 F.2d 825, 828 (2d Cir. 1981). Therefore the court below correctly granted summary judgment as to the remaining fees sought.

North River argues on appeal that it was wrongly precluded from producing facts to support its allegations because Scali obtained a protective order after North River filed notice to take Paul, Weiss's deposition. We are unpersuaded by this argument, however, inasmuch as North River made no request for discovery under Fed. R. Civ. P. 56(f)* in connection with its opposition to Scali's Rule 56 motion for summary judgment. Lack of time or discovery sufficient to present specific facts in opposition to a summary judgment motion cannot be argued for the first time on appeal. *See Avila v. Travelers Insurance Co.*, 651 F.2d 658, 660 (9th Cir. 1981).

---

* "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

Appendix A

On cross-appeal Scali contends that it was entitled to prejudgment interest under N.Y.C.P.L.R. §5001,* pursuant to the claim in its complaint for "compensatory damages . . . together with interest thereon from the earliest ascertainable date the cause of action existed." We agree that §5001 applies to this case and that under its provisions an award of prejudgment interest is mandatory. *See United Bank Ltd. v. Cosmic International, Inc.*, 542 F.2d 868, 877-79 (2d Cir. 1976). Scali is therefore entitled to interest on the legal fees and expenses awarded by the district court in granting Scali's motion for summary judgment. Interest shall be computed from July 8, 1980, the date on which Scali submitted a formal claim to North River. *See In re West's Estate*, 257 N.Y. 108, 177 N.E. 389 (1931) (interest for legal fees recoverable from date of demand); *Neimark v. Martin*, 7 App. Div. 2d 934, 183 N.Y.S. 2d 812 (1959) (same).

The judgment is therefore modified so that prejudgment interest shall run from July 8, 1980, and is affirmed as so modified.

s/ Wilfred Feinberg
Chief Judge.

s/ James L. Oakes
Circuit Judge.

s/ William C. Conner
District Judge.

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* "Interest shall be recovered upon a sum awarded because of a breach of performance of a contract . . . (and) shall be computed from the earliest ascertainable date the cause of action existed. . . ."

APPENDIX B — ORDER, DECISION AND JUDGMENT OF DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

80 Civ. 7112 (RWS)

SCALI, McCABE, SLOVES, INC.,

Plaintiff,

-against-

THE NORTH RIVER INSURANCE COMPANY,

Defendant.

Plaintiff having moved herein for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting it partial summary judgment for compensatory damages in the amount of $117,487.49, with interest thereon as provided by law; and the Court having heard the argument of counsel, and having considered the matter and made findings of fact and conclusions of law; and the Court being duly advised,

NOW, THEREFORE, upon the aforesaid findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion for partial summary judgment is granted in all respects, save that it is denied with respect to $1,000 in compensatory damages; and that plaintiff therefore have judgment against defendant in the amount of $116,487.49.

Appendix B

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that interest on the aforesaid amount of $116,487.49 run from July 8, 1980, the date upon which the Court finds plaintiff made proper demand of defendant for said amount, at the statutory rate of six percent per annum (N.Y. CPLR 5004).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon consent of plaintiff, plaintiff's claim for compensatory damages in the amount of $1,000, with respect to which plaintiff's motion for partial summary judgment is herein denied, be, and the same hereby is, dismissed without prejudice and without costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court enter final judgment as hereinabove provided, pursuant to Fed. R. Civ. 54(b) and 58, the Court having expressly determined that there is no just reason for delay in entry of final judgment on this order because plaintiff's claims for compensatory damages have been fully disposed of.

Dated: New York, New York
July 17, 1981

s/ Sweet
United States District Judge

Judgment Entered 7/22/81

s/ Raymond F. Burghardt
Clerk

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCALI, McCABE, SLOVES, INC.,

Plaintiff,

- against -

THE NORTH RIVER INSURANCE COMPANY,

Defendant.

80 Civ. 7112 (RWS)
OPINION

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Appendix B

Sweet, D.J.

This is a diversity action by Scali, McCabe, Sloves, Inc. ("Scali") against The North River Insurance Company ("North River") seeking compensatory and punitive damages under an insurance policy ("the policy") in which the latter agreed to indemnify and defend the former against certain actions for damages in libel. Scali's claim here involves its defense of a libel action brought against it in state court in 1976, *Dictaphone Corporation v. Sloves, et al,* Index No. 04684/76. After this federal suit was instituted, North River reimbursed Scali for the money it paid in settlement of that action. Scali now moves for partial summary judgment against North River on that portion of this action which seeks recoupment of legal fees and costs incurred by Scali in the defense of the state court libel action. In all but one particular, the motion is granted. The court's findings of fact, based on the affidavits and documents submitted in connection with this motion, and conclusions of law follow.

The insurance policy under which Scali seeks reimbursement from North River was issued to Scali in January, 1976. That policy obligated North River "to defend, subject to the conditions, exclusions and limits provided for . . . any action instituted against the insured, together with the payment of reasonable attorneys' fees incurred in the defense thereof . . . " As mentioned above, Scali was sued for libel in New York state court in an action commenced on March 9, 1976. The underlying claim in that state court action is irrelevant here.

The Chairman of Scali, Martin Sloves ("Sloves"), retained Paul, Weiss, Rifkind, Wharton & Garrison ("Paul, Weiss") to defend Scali in the libel case. Paul J. Newlon ("Newlon"), a member of Paul, Weiss, was initially in charge of handling the case on Scali's behalf. He promptly notified Scali's insurance agent

of the suit; that notice was given before Scali answered or otherwise appeared in the case. The agent, in turn, notified North River's corporate parent, Crum & Forster[1], of the pendency of the suit, and forwarded to it papers relating to the case.

Some two months later, on May 18, the insurance company replied, in a letter in which it reserved its rights under the policy, stated that it had instituted an investigation of the matter, and requested that Paul, Weiss "refrain from pursuing discovery motions" until the resolution of the coverage questions. In the meantime, however, Paul, Weiss, having heard nothing from the insurance company, had already begun to defend Scali in the state court action, albeit without authorization from the insurance company. In response to the May 18 letter, by the letter of May 20, 1976, Newlon promised that Paul, Weiss and its client Scali would cooperate with the insurance company's investigation, and informed the company of developments in the state court action during the period of North River's silence. Those developments included certain completed proceedings on discovery motions and the issuance of a court directive that discovery go forward on May 26. Newlon's letter further stated: "Unless we hear from you to the contrary, we intend to go forward with this discovery according to the agreed schedule." The insurance company did not respond. Discovery proceeded.

In June, a Paul, Weiss associate met with the insurance company's investigator and requested a prompt determination of the coverage question. He advised the investigator that discovery would go forward.

In September, having heard nothing from the insurance company since the May 20 letter mentioned above, Newlon wrote to them once again. He reiterated his request for a speedy

resolution of the coverage issue, said that until one was reached "we . . . will continue to take such steps as we deem appropriate in defending the action," and apprised the company of further developments in the case, including continued discovery. A week later, Scali's insurance agent also wrote to the insurance company protesting the latter's unresponsiveness and asserting the necessity of Scali's proceeding with its defense of the state court action despite the company's silence.

In October, the insurance company requested Paul, Weiss to contact its attorney. A Paul, Weiss associate did so. In November, the company's attorney asked for materials relating to the state court action. Those materials were delivered to him that same month, along with a cover letter indicating that discovery would be proceeding "in the very near future." Having heard nothing in response, Paul, Weiss wrote to the attorney in January, once again asking for action and apprising him of the discovery schedule.

In May of 1977, a full year after its first acknowledgement of Paul, Weiss' correspondence regarding the state litigation, the insurance company and its counsel met with Paul, Weiss. They undertook that within two weeks of receipt of transcripts of depositions in the Dictaphone litigation the coverage question would be resolved. The transcripts were delivered on May 24, 1977. It was not until November 10, 1977, however, that the insurance company finally wrote to Scali, acknowledging that the claim, with certain exceptions, was covered by the policy.

The November 10 letter contains the following two paragraphs:

> Your attorneys did not move to stay proceedings as we requested on May 18, 1976. It is our opinion

> that any legal expenses you incurred as a result of your attorneys' actions after they had appeared and answered would not be covered under our policy of insurance. This previously stated Condition of the policy was clearly violated by your actions.
>
> We will pay for all necessary legal expenses which accrue after this date and which would include the costs of answering the summons and complaint on behalf of both defendants, and the estimated cost of a motion to stay proceedings arising from the pending action.

Newlon responded on behalf of Scali on January 31, 1978, in a letter in which he protested the insurance company's disavowal of liability for most pre-November 10 legal fees. Newlon pointed out that the insurance company had never requested Paul, Weiss to move to stay all proceedings and that the company's indecision regarding coverage would have provided no legal basis for doing so. Newlon further observed that the insurance company had never questioned the steps taken in defense of the suit.

On April 19, the insurance company responded. It expressed interest in the possibility of settlement, and indicated its willingness to pay up to $10,000 if a settlement could be worked out. Paul, Weiss replied that it would renew its theretofore fruitless efforts to arrive at a settlement, and brought the insurance company up to date on the progress of the litigation.

The case was placed on the trial calendar, and remained there for some time as settlement negotiations were pursued. Dictaphone

asked $35,000; Scali offered only the $10,000 that the insurance company had expressed its willingness to pay. The negotiations failed in June of 1979. The insurance company, though advised of these events, did not suggest that the $35,000 figure be accepted. In rejecting that offer, Scali relied upon the insurance company's promise of November 10, 1977 to pay for all necessary legal expenses incurred in connection with the litigation.

At this point, Newlon was relieved on the *Dictaphone* litigation by a partner at Paul, Weiss, Lewis Kaplan ("Kaplan"), who assumed primary responsibility for the action. Kaplan successfully moved to amend Scali's answer. He informed the insurance company of the action. He then moved for summary judgment, having informed the company in advance of his intention to do so and having received no objection. The summary judgment motion was unsuccessful. After informing the insurance company of this defeat, Kaplan stated that he planned to appeal, and invited the company's views on the matter. That invitation elicited no response.

In February, 1980, Kaplan wrote to the insurance company that Dictaphone had made a settlement offer of $70,000. He elicited the company's views on the offer. In mid-March, the company rejected the $70,000 proposal. In turning it down, Scali once again relied on the company's assurance that all necessary legal expenses would be covered by its insurance policy.

Finally, on March 17, 1980, the case was called for trial. Before the jury selection commenced, on the judge's recommendation, it was settled for $25,000. Before entering into the settlement agreement, Kaplan attempted to reach the insurance company by phone, but was unable to do so. By letter of March 17, 1980, Kaplan notified the insurance company of the settlement.

That letter elicited no offer of payment, however, and so on July 8, 1980 a formal claim was submitted. The claim was for a total of $142,487.49, broken down as follows: $112,290.54 in legal fees and disbursements; $3,530.95 in stenographers' fees; $1,666.00 for the preparation of an expert witness; and $25,000 for the settlement payment to Dictaphone. The insurance company did not respond to the claim, despite subsequent, written prodding by Kaplan. This suit was filed in December, 1980.

On the basis of these facts, Scali contends that it is entitled to summary judgment for legal fees and disbursements. In opposition, the insurance company argues that issues of fact[2] exist and that, therefore, summary judgment is inappropriate. The issues that the insurance company contends remain to be litigated concern the coverage afforded by the policy, the necessity of the tasks performed by Paul, Weiss in the conduct of the *Dictaphone* litigation, and the reasonableness of Paul, Weiss' fees, for the policy held by Scali provides only for the payment of "reasonable" fees. Although it is not altogether clear, the insurance company does not appear to take issue with the hourly rate charged, but rather with the time expended and tasks performed.

Scali contends that North River is estopped from contesting the reasonableness of attorneys' fees. Scali's argument has two parts. First, as to legal expenses incurred after November 10, 1977, Scali contends that North River is estopped by its letter of that date, in which it declared: "We will pay for all necessary legal expenses which accrue after this date . . . " Second, as to pre-November 10, 1977 legal expenses, Scali contends that because North River did not initially protest their reasonableness when it disclaimed liability on a different ground, it cannot do so now. I have concluded that Scali is entitled to recover all but $1,000 of its claim for legal fees and expenses, but for reasons slightly different from those advanced by Scali here.

Appendix B

As to the first issue, whether the policy covers the conduct of the *Dictaphone* litigation, it is only in its Rule 3(g) statement that the defendant suggests that an issue of fact may exist. In the first paragraph of that statement, the insurance company declines either to admit or deny coverage. However, in at least three other documents, the insurance company has admitted coverage. First, in its letter of November 10, 1977, quoted in part above, the insurance company stated that it "would provide coverage," subject to certain limitations, conditions and exclusions. Second, in its answer to Scali's complaint in this case, the defendant admitted coverage, although that admission was also replete with reservations. Finally, in the affidavit of a claims supervisor in the employ of the defendant that was submitted in opposition to this very motion, the supervisor states that the "[d]efendant has admitted . . . that it had the obligation, under the policy of insurance issued to the plaintiff, to pay the . . . attorney's fees incurred in the defense of the DICTAPHONE action . . . on the theory of reasonable value of such services." Based on these three documents, I find that the insurance company has admitted that the policy afforded coverage to the conduct of the *Dictaphone* litigation and cannot now raise the coverage question as an issue of fact to bar the granting of summary judgment. *See Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co.*, 147 F.2d 399, 403-05 (2d Cir.), *cert. denied*, 325 U.S. 861 (1945); *General Construction Co. v. Hering Realty Co.*, 201 F. Supp. 487,492-93 (E.D.S.C. 1962), *app. dissm'd*, 312 F.2d 538 (4th Cir. 1963).

Indeed, even disregarding the admissions contained in the aforementioned answer and affidavit, I would find that the insurance company is estopped by the November 10 letter alone from contesting the fact of coverage. Scali relied on that letter and the assurance of coverage it contained in rejecting the

settlement offers subsequently made. The insurance company's commitment, coupled with Scali's detrimental reliance thereon, estops the company from disclaiming coverage under the policy for Scali's legal expenses. *See Posner v. United States Fidelity & Guaranty Company,* 226 N.Y.S.2d 1011, 1017 (Sup.Ct. Sullivan Cnty.), *aff'd,* 229 N.Y.S.2d 160 (3d Dep't. 1962) ("An estoppel rests upon the word or deed of one party upon which another rightfully relies and so relying changes his position to his injury"). *See generally Val Drugs, Inc. v. Lynn,* 402 F. Supp. 174, 177 (W.D.N.Y. 1975) ("It is well settled that the acts of an insurer which lead the insured to believe he is covered under the policy estop the insurer from denying coverage . . . ").[3]

As to the second issue, the necessity of the tasks performed and the reasonableness of the fees charged by Paul, Weiss, with one small exception I find that the defendant has failed to make a showing sufficient to raise a factual issue that would block the granting of summary judgment. "[W]hen a motion for summary judgment is made and supported . . . the opposing party may not rest upon mere conclusory allegations or denials." *Markowitz v. Republic National Bank of New York,* No. 80-7325 (2d Cir. June 11, 1981). *See SEC v. Research Automation Corp.,* 585 F.2d 31,33 (2d Cir. 1978). The defendant here has sought to do precisely that. The insurance company has not opposed Scali's summary judgment motion with affidavits, based on first-hand knowledge, setting forth as a matter of fact that the fees charged were unreasonable or the tasks performed unnecessary to the defense of the state court action. Indeed, it has adduced no facts on the basis of which such an inference could be made. Nor has it suggested any reason for its failure to do so.[4] Fed.R.Civ.P. 56(f). Instead, it has sought to withstand Scali's summary judgment motion through conclusory allegations of unreasonableness and through a recitation of Paul, Weiss' invoices followed by a string

of rhetorical questions such as: "Is such charge for these services reasonable?" "Can this amount, in all seriousness, be considered reasonable?" "Can the amount of such services be considered reasonable?" Conclusory allegations and rhetoric do not raise an issue of fact regarding the necessity or reasonableness of the *Dictaphone* legal expenses sufficient to defeat Scali's summary judgment motion.

However, on one detail the insurance company has raised such a factual issue. In its invoice dated August 3, 1979, Paul, Weiss billed for preparation for and attendance at a pre-trial conference in connection with the state court action. In opposition to this motion, the insurance company submitted an affidavit from a law clerk in the company's attorneys' office stating that he checked the records of the state court action and found no entry reflecting that such a conference was held. There is therefore an issue of fact regarding the propriety of this one invoice for $1,000, and Scali's recovery on this motion will therefore be reduced by that amount.

With the exception of that $1,000 item, Scali is entitled the partial summary judgment it seeks.

Submit judgment on notice within ten (10) days.

IT IS SO ORDERED.

DATED: New York, N.Y. June 30, 1981

s/ Sweet
ROBERT W. SWEET
U.S.D.J.

Appendix B

FOOTNOTES

1. For purposes of this motion, no attempt has been made to distinguish between North River and Crum & Forster. For the sake of simplicity, both will be referred to in this opinion as "the insurance company," "the company," or "the defendant."

2. By affidavit, the insurance company attempts to raise an issue of fact in addition to those discussed below, namely, whether it was informed of the various settlement possibilities as they arose. However, the documentary evidence, that is, the letters dated June 12, 1979, and February 14, 1980 from Paul, Weiss counsel to the insurance company, clearly establish that the insurance company was informed of at least two of the settlement offers made. Based on these documents, I conclude that there is no genuine issue of fact on this point.

3. The insurance company has raised an additional issue regarding the pre-November 10 legal expenses. Its original refusal to pay for most of those expenses was based on an alleged failure to comply with a "policy condition" — that Scali move to stay discovery proceedings in the district court. This ground was also raised in the defendant's answer to this action. However, this alleged breach of a "policy condition" is pleaded only generally and not with particularity, and is therefore improperly pleaded. *See* Fed.R. Civ.P. 9(c). Yet because that pleading error could presumably be corrected in time, some consideration of the merits of this defense is appropriate here.

The alleged breach of a "policy condition," insofar as is ascertainable from the record before me, relates to the request made by the insurance company in its letter of May 18, 1976, that Paul, Weiss "refrain from pursuing discovery motions until the coverage questions are resolved." North River characterizes

this as a request that Paul, Weiss move to stay all proceedings in the state court action, and maintains that Paul, Weiss' failure to do so and continued, active conduct of the litigation after this request was made constituted a breach of a policy condition.

I find that North River is estopped from raising this defense now because of subsequent events. Specifically, I refer to Paul, Weiss' letter of May 20, 1976, in which Paul, Weiss informed the insurance company of events in the case and of its intention to follow the court-ordered discovery schedule unless the insurance company voiced some objection. The company did not voice any objection; discovery proceeded. In these circumstances, because Scali was prejudiced by the insurance company's silence, North River is now estopped from disclaiming liability. *See State Farm Mutual Automobile Ins. Co. v. Elgot,* 369 N.Y.S.2d 719, 721 (1st Dep't. 1975) (when the insured has been prejudiced as a result of insurer's failure to disclaim liability, doctrine of estoppel is applied); *Allstate Ins. Co. v. Flaumenbaum,* 308 N.Y.S.2d 447, 454 (Sup. Ct. N.Y. Cnty. 1970) ("if the insurer, with full knowledge of the facts, acts in a manner inconsistent with a disclaimer of liability, it will be precluded from so disclaiming.").

4. Presumably, the defendant could have opposed this motion with affidavits from attorneys who reviewed the record of the *Dictaphone* litigation and concluded that unnecessary tasks were performed or that the fees charged were otherwise unreasonable. No such affidavits were submitted.

Opposition

Office - Supreme Court, U.S.
FILED
APR 26 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1786

In the Supreme Court of the United States

OCTOBER TERM, 1981

THE NORTH RIVER INSURANCE COMPANY,
Petitioner,

vs.

SCALI, MCCABE, SLOVES, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Preliminary Statement

In this diversity case, summary judgment was routinely granted against petitioner, an insurance company, when it failed to show there was any disputed issue of fact as to its liability on an insurance claim. The case was decided by application of settled principles of law to undisputed facts. It raises no genuine issue of federal, or even state, law. Accordingly, there is no reason to grant certiorari here.

Statement of the Case

This is a suit on an insurance policy issued by the North River Insurance Company ("North River") to Scali, McCabe, Sloves, Inc. ("Scali"),* a New York advertising agency, in which North River promised, with certain limitations and exclusions, to indemnify and defend Scali in libel actions.

After the policy was issued, Scali was sued for libel in New York State court. Scali settled that action, with the express approval of North River, for $25,000 at the start of jury selection. It subsequently filed a claim with North River for its settlement cost and $117,487.49 in legal expenses it had incurred in defending the action over four years. North River, however—although it had already admitted Scali's claim was covered by its policy—simply ignored the claim. Indeed, it did not even respond to Scali's offer to provide documentation of the claimed expenses. After more than five months passed with no response from North River, Scali was left with no remedy but to bring this suit.

Scali's complaint sought compensatory damages in the amount of its settlement cost and legal expenses in the underlying state court action, together with punitive damages in the amount of $1,000,000. After the commencement of this suit, North River finally paid Scali the $25,000 settlement cost. When North River demanded extensive document discovery, Scali obtained a protective order staying discovery until it moved for partial summary judgment on its claim for legal expenses. The ground for the protective order was that broad and costly discovery might well prove unnecessary. The order was explicitly sought and granted, however, without prejudice to North River's right to seek discovery for purposes of opposing summary judgment under Fed. R. Civ. P. 56(f), should it require such discovery.

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* Pursuant to Rule 28.1 of the Rules of this Court, a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of respondent Scali, McCabe, Sloves, Inc. is set forth in Appendix A.

The District Court (Sweet, J.) granted Scali's motion for partial summary judgment, holding that North River had failed to demonstrate any genuine issue of fact with respect to all but $1,000 of Scali's claim for legal expenses. Noting that North River had made only "conclusory allegations" denying the necessity for and reasonableness of those expenses, the District Court stated:

> "The insurance company has not opposed Scali's summary judgment motion with affidavits, based on first-hand knowledge, setting forth as a matter of fact that the fees charged were unreasonable or the tasks performed unnecessary to the defense of the state court action. Indeed, it has adduced no facts on the basis of which such an inference could be made." (15a)
>
> * * *
>
> "Presumably, the defendant could have opposed this motion with affidavits from attorneys who reviewed the record of the [state court] litigation and concluded that unnecessary tasks were performed or that the fees charged were otherwise unreasonable. No such affidavits were submitted." (18a)

The District Court noted also that North River had neither suggested any reason for its failure to cite specific facts in support of its allegations nor requested discovery under Rule 56(f). (15a)

On appeal by North River, the Second Circuit, in an unpublished *per curiam* opinion, unanimously affirmed the grant of summary judgment. The Court of Appeals stated:

> "North River presented only conclusory allegations that Scali's legal fees were unreasonable, but with one exception, produced no specific facts in opposition to the summary judgment motion to support its allegations." (3a)

The Court then rejected a contention by North River—which North River had never made in the District Court—that the protective order granted before Scali moved for summary

judgment had prevented it from producing facts in opposition to Scali's motion:

> "We are unpersuaded by this argument, however, inasmuch as North River made no request for discovery under Fed. R. Civ. P. 56(f) in connection with its opposition to Scali's Rule 56 motion for summary judgment. Lack of time or discovery sufficient to present specific facts in opposition to a summary judgment motion cannot be argued for the first time on appeal. *See Avila* v. *Travelers Insurance Co.*, 651 F.2d 658, 660 (9th Cir. 1981) [footnote omitted]." (3a)

The Court of Appeals also modified the judgment to award prejudgment interest. Petitioner apparently does not seek review of that aspect of the decision.

REASONS TO DENY THE WRIT

This Case Raises No Issue Worthy of Review

As the opinions of the courts below show, this case involves nothing more than a failure by North River to submit any competent evidence in opposition to Scali's motion for partial summary judgment. It thus turns solely on the application of long-established rules of evidence and procedure to particular facts. It raises no legal issue worthy of the name.

Such a case is not an appropriate candidate for Supreme Court review. As this Court has stated, "We do not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925).

Doubtless recognizing the weakness of its claim to certiorari, petitioner has attempted to conjure issues out of thin air which it contends deserve review. The most cursory examination reveals that none merits the attention of this Court.

1. First, North River asks this Court to decide whether summary judgment may be granted "without a hearing" where the reasonableness of legal fees is at issue. (11) The meaning of

the quoted phrase is mysterious, since Scali's summary judgment motion was fully briefed and argued both in the District Court and on appeal. Accordingly, if North River can be understood to pose any issue at all here, it can only be the question whether summary judgment is ever available on a claim for legal fees.

North River has made no arguments for such a novel restriction on the availability of summary judgment. It has cited no reasons why that "issue"—if such it is—would be appropriate for this Court's review. There simply is no reason why an insured may not obtain summary judgment against an insurer on a claim for indemnification for legal expenses where—as here—there is no genuine issue as to any material fact.

North River half-heartedly attempts to argue that there is a conflict among the Circuits on this point, citing only *Bogorad* v. *Schwarz,* 208 F.2d 704 (4th Cir. 1953). (11-12) *Bogorad,* however, does not conflict with the Second Circuit's decision here. In *Bogorad,* an attorney who had represented a husband and wife on a successful appeal sued the wife for compensation, the husband having become insolvent. The wife denied liability on the theory that she had not employed the attorney, and the District Court agreed. The Fourth Circuit, however, reversed on liability and—because the appeal on which the attorney had previously appeared had been in the Fourth Circuit—itself fixed the fee. Thus, *Bogorad* does not even suggest that summary judgment may never be granted in actions to recover attorneys' fees. Indeed, the fact that the Fourth Circuit itself determined the fee on appeal lends support to the contrary proposition.

2. North River next contends that this Court should determine "whether or not members of the general public have the right to expect that attorneys should, upon demand, make a showing of the necessity and reasonableness of the services for which they seek to be paid and make a showing that the charges sought are reasonable." (13)

This amounts to a request that this Court grant certiorari to pass on the abstract apple-pie-and-motherhood proposition

that lawyers should be able to justify their fees. The fees set by lawyers are, of course, already regulated both by contract law and the Code of Professional Responsibility. *See, e.g.*, Code of Prof. Resp. DR 2-106. Issues relating to the fairness of legal fees may continue to arise, but their resolution cannot be aided by the abstract holding petitioner suggests.

In any event, even if this Court were willing to decide petitioner's question, that question is not presented by this case.

First, North River's contract here was with Scali—not Scali's counsel. Its obligation was to indemnify Scali against its legal expenses. It is undisputed that Scali in fact paid the expenses that are the subject of its claim.

Moreover, the record shows that North River was kept fully informed by Scali's attorneys of the steps being taken in the defense of the state court libel action. Among other things, it was provided with copies of virtually all court papers and deposition transcripts. At no time prior to the start of this action did it ask for additional information about the state court action or raise any question about the necessity for the services performed or their cost. Indeed, it did not even avail itself of Scali's offer to furnish information about the expenses. It does not lie with North River now to seek to avoid its obligation to reimburse Scali by making conclusory assertions of unreasonable cost.

3. Finally, North River summarily asserts that it was denied due process by the entry of summary judgment against it. (14) It neither explains, nor cites any authority for, this assertion. This "issue" could not be meaningfully reviewed by this Court.

This Case Is Not a Suitable Vehicle for Review of Any Issue by This Court

Even if there were some issue worthy of review here—as there is not—this would be an inappropriate case in which to grant certiorari. As we believe is clear from the petition, this is not a case in which the Court may rely on petitioner to present clear arguments and an accurate picture of the evidence below.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Dated: April 22, 1982

Respectfully submitted,

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Appendix

APPENDIX A

Listing Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States

Scali, McCabe, Sloves, Inc.

Parent Company

Ogilvy & Mather International Inc.

Non-Wholly-Owned Subsidiaries

Abbott Mead Vickers/SMS Ltd. (United Kingdom)
Hart, Scali, McCabe, Sloves de Mexico S.A. (Mexico)

Affiliates

Ogilvy & Mather
Ogilvy & Mather (Canada) Ltd.
Panamericana Ogilvy & Mather S.A. (Mexico)
Standard Ogilvy & Mather Publicidade Ltda. (Brazil)
Ogilvy & Mather Resposta Direta (Brazil)
Ogilvy & Mather (Australia) Pty. Ltd.
Results Advertising (Australia) Pty. Ltd.
Meridian Advertising (Australia) Pty. Ltd.
Ogilvy & Mather (New Zealand) Ltd.
Ogilvy & Mather B.V. (Netherlands)
H.H.D./Ogilvy & Mather S.A. (Belgium)
Heumann, Ogilvy & Mather G.m.b.H. & Co. (West Germany)
Focus Werbeagentur, G.m.b.H. (West Germany)
Ogilvy & Mather Direkt G.m.b.H. (West Germany)
Ogilvy & Mather Ges.m.b.h. (Austria)
Ogilvy & Mather International Inc. (France)
Ogilvy & Mather Defrenois Direct Response
Ogilvy & Mather Group AB (Sweden)
Ogilvy & Mather A.S. (Norway)
Ogilvy & Mather Oy (Finland)

Ogilvy & Mather Reklamebureau A/S (Denmark)
Ogilvy & Mather Ltd. (United Kingdom)
Ogilvy & Mather (Eastern Africa) Ltd. (Kenya)
Ogilvy & Mather (Malaysia) Sdn. Bhd.
Artistree (Malaysia) Sdn. Bhd.
Flagbearer Meridian Advertising (Malaysia) Sdn. Bhd.
Ogilvy & Mather (Hong Kong) Pte. Ltd.
Results (Hong Kong) Ltd.
Meridian Advertising (Hong Kong) Ltd.
Michael Stevenson Ltd.
Ogilvy & Mather (Singapore) Pte. Ltd.
Ogilvy & Mather Direct Response (Singapore) Pte. Ltd.
Meridian Advertising (Singapore) Pte. Ltd.
Artistree (Singapore) Pte. Ltd.
Ogilvy & Mather (Thailand) Ltd.
Meridian Advertising Ltd. (Thailand)
Ogilvy & Mather Direct Response (Thailand) Ltd.
Ogilvy & Mather Public Relations (Thailand) Ltd.
Scali, McCabe, Sloves (Canada) Ltd.
Scali, McCabe, Sloves (Australia) Pty. Ltd.
Cole & Weber Inc.
Davidson Pearce Ltd. (United Kingdom)
Ortiz, Scopesi y Cia (Argentina)
Corporacion Publicitaria Nacional C.A. (CORPA) (Venezuela)
Van Zijl & Schultze, Lund & Tredoux (Pty.) Ltd. (South Africa)
Altolevel Recruitment Advertising (Pty.) Ltd.
Ogilvy Benson & Mather Pvt. Ltd. (India)
Centrum Publicitario Ltda. (Colombia)
Promoplan Ltda. (Chile)
Bassat y Asociados S.A. (Spain)
Publicdirect S.A. (Spain)
Prieto Bassat Ogilvy & Mather S.A. (Spain)
Bold Advertising Ltd. (Greece)
Forum Internacional de Publicidad (Peru)
Livraghi, Ogilvy & Mather S.r.l. (Italy)
Cathay Advertising Ltd. (Taiwan)
Adnan, Ogilvy & Mather (Dubai U.A.E.)